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10/027,658	12/20/2001	James Michael Shumpert	384.7509USU	1146

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EXAMINER

NGUYEN, TAN D

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3689

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/027,658	Applicant(s) SHUMPERT, JAMES MICHAEL	
	Examiner Tan Dean D. Nguyen	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10, 12-15, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 12-15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed Sept. 02, 2009 has been entered.

Claim Status

2. Claims 1-6, 8-9 and 10, 12-15, 17-18 are pending. Claims 7, 11, and 16 have been canceled. The pending claims comprise 2 groups:

1) System¹: 1-6, and 8-9, and

2) System²: 10, 12-15, and 17-18.

Canceled claims: 7, 11 and 16.

As of 9//02/09, independent system 1 is as followed:

1. (currently amended) A system ~~computer implemented method for determining authenticity of a business partner in response to a request of a user~~ comprising:

(1) a processor; and

(2) a memory that contains a program that controls said processor to perform actions of:

(a) receiving a request that indicates that a user desires a determination of an authenticity of a business partner;

(b) receiving an identity of said business partner from said user;

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(c) matching said identity of said business partner to a business data record of a business that is one of a plurality of businesses by searching at least one database for said business data record having at least one data attribute that matches said identity;

if step (c) finds a match, then:

determining whether said business partner is authentic by processing at least one of said data attribute of the matched said business data record according to a set of authentication rules, wherein said data attribute represents at least one credential of said business partner; and

if step (c) fails to find a match, then:

presenting a registration template to said business partner for registration in said business database;

obtaining registration data from said business partner via said registration template; and

updating said business database with said registration data; and

(d) notifying said user of whether said business partner is authentic.

Principles of Laws

3. The preamble is normally considered “being optional” and does not have much patentable weight since many times it is merely statements of purpose or intended use. See MPEP 2111.02 It’s the body of the claim that matters and the current body of the claims have no tie to any particular machine. *Corning Glass Works*, 868 F.2d at 1257, 9 USPQ2d at 1966. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997) (“where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation”); *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 (preamble is not a limitation where claim is directed to a product and the preamble merely recites a property inherent in an old product defined by the remainder of the claim); *STX LLC. v. Brine*, 211 F.3d 588, 591, 54 USPQ2d 1347, 1350 (Fed. Cir. 2000) (holding that the preamble phrase “which provides improved playing and handling characteristics” in a claim drawn to a head for a lacrosse stick was not a claim limitation).

4. Note: independent claims 1 and 10 are apparatus claim. In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While

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features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See (1) MPEP 2114. (2) *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does, i.e. "device which acts or performs ...". (3) *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. (4) *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Note that in apparatus claim, descriptions to positive claim language, such as produced when one uses the term "configured to" or, even more positively, 35 U.S.C. 112, sixth paragraph language, "means for". Using any other claim format such as using method steps, are/may not be proper and should not be given the same interpretation of the machine claim or since to do so would be to dilute the provisions of the statute of an apparatus claim.

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "**for** determining authenticity ..." carries no patentable weight.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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6. Claims 1-6, 8-9 (system) and 10, 12-15, 17-18 (system) are rejected under 35 U.S.C. 101 because the claimed invention is directed to more than one class of statutory subject matter.

The independent claim 1 begin by discussing a **system** comprising: a processor, a memory, but the body of the claim include method steps, such as “**controls**”, “perform actions of”, “receiving”, “matching”, “finds”, “determining”, “fails to find”, “presenting”, “obtaining”, “updating”, and “notifying”, or respectively use language that is used in the claims of a method. “A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only”. See Ex parte Lyell (17 USPQ2d 1548).

Similarly dependent claims 2-6, 8-9 comprise method steps, such as “performs”, “providing”, “is presented”, “require”, “searching”, “is selected”, etc, or respectively use language that is used in the claims of a method. “A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only”. See Ex parte Lyell (17 USPQ2d 1548).

Similarly, claims 10, 12-15 and 17-18 (system) also comprise method steps similar to claims 1-6, 8-9 (system) above, and therefore are rejected for the same reasons set forth above.

Note that in apparatus claim, descriptions to positive claim language, such as produced when one uses the term “configured to” or, even more positively, 35 U.S.C. 112, sixth paragraph language, “means for”. Using any other claim format such as

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using method steps, are/may not be proper and should not be given the same interpretation of the machine claim or since to do so would be to dilute the provisions of the statute of an apparatus claim.

Claim Rejections - 35 USC § 112

7. **Claims 1-6, 8-9 (system¹) and 10, 12-15, 17-18 (system²) are** rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) **Claims 1-6, 8-9 (system¹)** are vague and indefinite since the claims uses “method steps” such as “**controls**”, “perform actions of”, “receiving”, “matching”, “finds”, “determining”, “fails to find”, “presenting”, “obtaining”, “updating”, and “notifying”, “performs”, “providing”, “is presented”, “require”, “searching”, “is selected”, etc., in an apparatus claims. See IPXL Holdings. Va. Amazon.com (Fed. Circuit 2005). System claim that includes a method step is invalid as indefinite since it’s not clear what is the scope of the apparatus claim.

2) Similarly, claims 10, 12-15 and 17-18 (system²) also comprise method steps similar to claims 1-6, 8-9 (system) above, and therefore are rejected for the same reasons set forth above.

3) Claims 2-6, 8-9 are vague and indefinite since the claims contain the phrase “The **method** of claim 1 (or 3 or 8)” but claim 1 has been amended to be an “apparatus” claim.

Claim Objections

8. Claim 2 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

1) In claim 2, it's not clear how "a user device via a network" (a new or 2nd user) further limits "a user" (1st user) of claim 1, step (a)? The limitation in claim 2 should refer to the "a user" (1st user) of claim 1 only.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1-6, 8-9 (system¹), 10, 12-15, 17-18 (system²) are rejected under 35 U.S.C. 102(e) as being anticipated by KORITZINSKY ET AL (US pat 6,272,469)

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Claim 1 basically reads: a system comprising:

a) a processor; and

b) a memory that contains a program [that **controls** said processor **to perform actions of:**

(a) receiving a request that indicates that a user desires a determination of an authenticity of a business partner;

(b) receiving an identity of said business partner from said user;

(c) matching said identity of said business partner to a business data record of a business that is one of a plurality of businesses by searching at least one database for said business data record having at least one data attribute that matches said identity;

if step (c) finds a match, then:

determining whether said business partner is authentic by processing at least one of said data attribute of the matched said business data record according to a set of authentication rules, wherein said data attribute represents at least one credential of said business partner; and

if step (c) fails to find a match, then:

presenting a registration template to said business partner for registration in said business database;

obtaining registration data from said business partner via said registration

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template; and

updating said business database with said registration data; and

(d) notifying said user of whether said business partner is authentic.]

Note that the bracket “[...]” above indicated that this limitation has no patentable weight in an apparatus claim.

Similarly, KORITZINSKY ET AL discloses:

A system;

{see Figs. 1, 4, 6}

a) a processor;

{see Fig. 1, element 84, “processing system”, “computers”, col. 6, lines 22-46}

b) a memory that contains a program that controls said processor;

{see Figs. 1, 84, “processing system”, “computers”, “element 88 “system of databases”, col. 6, lines 22-46}

As for dep. claim 2 (part of 1 above), which deal with well known feature of user network communication, i.e. connection with a user device via a network, these are taught on Figs. 1-2. Furthermore, the claim has no apparatus structures and therefore having no patentable weight in an apparatus as indicated above.

As for dep. claims 3-5 (part of 1 above), which deal with well known feature for providing a form, template for inputting information, these are taught in Figs. 6-8.

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Furthermore, the claims have no apparatus structures and therefore having no patentable weight in an apparatus as indicated above.

As for dep. claim 6 (part of 1 above), they have no apparatus structures and therefore having no patentable weight in an apparatus as indicated above. Moreover, these are inherently included in the system of KORITZINSKY ET AL as shown on Figs. 6-8, 15-16.

As for dep. claims 8-9 (part of 1 above), which deals with well known database management parameter, i.e. searching data or attribute in a database, these are taught in Figs. 15 or 16 or 12 and 1-2.

As for independent system claim 10, which basically has the same limitation as in claim 1 above with a device limitation which is taught in Fig. 1 of KORITZINSKY ET AL, it's rejected for the same reason set forth in claim 1 above.

As for dep. claims 12-14 (part of 10 above), which deal with well known feature for providing a form, template for inputting information, these are taught in Figs. 6-8. Furthermore, the claims have no apparatus structures and therefore having no patentable weight in an apparatus as indicated above.

As for dep. claim 15 (part of 10 above), they have no apparatus structures and therefore having no patentable weight in an apparatus as indicated above. Moreover, these are inherently included in the system of KORITZINSKY ET AL as shown on Figs. 6-8, 15-16.

As for dep. claims 17-18 (part of 1 above), which deals with well known database management parameter, i.e. searching data or attribute in a database, these are taught in Figs. 15 or 16 or 12 and 1-2. Furthermore, the claims have no apparatus structures and therefore having no patentable weight in an apparatus as indicated above.

Claim Rejections - 35 USC § 103

11. Claims 1-6, 8-9 (system¹), 10, 12-15, 17-18 (system²) are rejected (2nd time) under 35 U.S.C. 103(a) as being unpatentable over (1) Applicant's Admitted Prior Art (AAPA) in view of (2) ROSS (us 7,343,623) or vice versa and further in view of (3) KORITZINSKY ET AL and (4) CALVER (US 2001/0032092)

As for independent system claims 1 and 10, AAPA, as cited on page 1, line 8 to page 2, line 14 (or US 2003/0120614, paragraphs [0003]-[0004]) fairly teaches current method for determining authenticity of a business partner in response to a request of a user in an off-line or manual technique by entering the request of a user into a computer system associated with the business database, the authentication process then employs a matching technique to find a data record of a business in the business database that matches the identifying data of the business partner. The data record of the matched business is then assessed for authenticity. The request also provides some data that identifies the business partner {see page 1, lines 30-31 "*Current methods Use an off-line technique...*}. AAPA fairly teaches the claimed invention except for carrying out using a computer or "computer-implemented" as shown in the preamble, step of wherein said matching fails to find a match, then... and

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updating the database with registration data feature of “*obtaining registration data ... via said registration template*” and carrying out (d) according to a set of authentication rules.

In a similar method for verification of user authentication, **ROSS** fairly teaches a computer-implemented method for a subject or data remote authentication submitted by a remote user to determine whether the subject/data is authenticate (or verification of requested subject /data or **user authentication**) and according to a set of authentication rules (d) {see [0004], [0008], [0014], [0025][0026], Fig. 1. The term “subject” refers to any person or entity being authenticated. User authentication is the process of determining whether the subject is who he claims to be. Note that ROSS also discloses the carrying out the steps online in the case of Web forms {see [0004], and [0008]}. It would have been obvious to modify the teachings of AAPA of “subject (person) authentication” to include computer-implemented and authentication rules as taught by ROSS to obtain well known benefits of the online process (remote uses or anywhere) and convenience such as quick response.

Vice versa, the teachings of ROSS is cited above. It would have been obvious to modify the subject/person request from a client/user of ROSS wherein the subject/data is about an authenticity of a business partner as taught by AAPA as mere applying the same authentication/verification techniques to other type of subject/data or requested subject/data from the user or wherein the function or intended use of the subject/data is for authentication of a business partner.

The teachings of AAPA/ROSS fails to disclose the step of wherein said matching fails to find a match, then... and updating the database with registration data and feature of "*obtaining registration data ... via said registration template*".

KORITZINSKY et al is cited to teach a method/system for verifying a service such as subscription or status checking by carrying out similar steps as indicated above and specifically the step of "wherein said matching fails to find a match, then... and updating the database with subscription/registration data" by sending a message or request to the user to insure the service is not interrupted {see Figs. 15, 16, cols. 12,13, 21-23. It would have been obvious to modify the teachings of ROSS /AAPA to include the teaching of KORITZINSKY et al to insure the request service is established / maintained. The teachings of ROSS /AAPA/KORITZINSKY ET AL teaches the claimed invention except for the form for user data input (response to the message/request), a template. Note that the term "registration" is a relative term and broad terms.

In a similar data interactive communication system, CALVER is cited to teach the feature of "presenting a template to a user for user data input or registering of the user relevant information (request) in a business database and obtaining user information (registration) from the user via the template in order to provide a desired service (solution) based on the user's template {see Figs. 3, 4, 6, 12, pars. [0066-0069].

It would have been obvious to modify the teachings of ROSS /AAPA/KORITZINSKY ET AL to use a template for user data input or registering of the user relevant information (request) in a business database and obtaining user information (registration) from the user via the template as taught by CALVER in order

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to provide a desired service (solution) based on the user's template request {see Figs. 3, 4, 6, 12, pars. [0066-0069]}.

As for dep. claim 2 (part of 1 above) which deals with automation parameters, this is taught in ROSS [0008] or KORITZINSKY et al Figs. 1 or 2 or CALVER Figs. 3-5.

As for dep. claims 3-5 (part of 1 above) which deals with well known computer data entry parameters, i.e. standard template for entry of data or filling out a form, this is taught in ROSS [0008] or CALVER Figs. 6, 12.

As for dep. claim 6 (part of 1 above) which deals with well known authentication rules parameter, i.e. types of rules such as current transactions with trade reference, etc., this is fairly taught in ROSS [0004-0005][0014-0016].

12. As for dep. claims 8-9 (part of 1 above) which deals with well known matching parameters, i.e. other attributes such as license, professional membership, etc., these are fairly taught in ROSS [0004, 0008, 0014, 0021, 0034], Fig. 2. Moreover, this varies with the type of request, business entity, etc., and the selection of the desired information is within the knowledge of the skilled artisan, an experienced businessperson with many years of practical experience. Moreover, this is non-functional descriptive material (information) and generally receives no patentable weight unless there is a step for carrying out a transaction.

As for dependent system claims 12-15, 17-18 (part of 10 above), which have similar limitations as in dep. claims 3-6 and 8-9 (part of 1 above), they are rejected for the same reasons set forth in the rejections of claims 3-6 and 8-9 above.

Response to Arguments

13. Applicant's arguments, see paper filed 9//2/09, with respect to the rejections of claims 1-18 have been fully considered and are not persuasive in view of the new ground rejections which are caused by applicant's amendment of the claims.

14. Furthermore, due to the new claims interpretation due to apparatus claims as indicated above, applicant's arguments are not persuasive because they refer to the parts that have no patentable weight in an apparatus claim.

15. Also, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The citations of specific teachings of ROSS and KORITZINSKY ET AL on pages 7-9 are noted but they are not persuasive because:

1) ROSS is cited to teach the concept of as mere applying the same authentication/verification techniques to other type of subject/data or requested subject/data from the user or wherein the function or intended use of the subject/data is for authentication of a business partner, and

2) KORITZINSKY et al is cited to teach a method/system for verifying a service such as subscription or status checking by carrying out similar steps as indicated above and specifically the step of "wherein said matching fails to find a match, then... and updating the database with subscription/registration data" by sending a message or request to the user to insure the service is not interrupted {see Figs. 15, 16, cols. 12,13,

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21-23. The difference in the type of request or service is not essential and within the knowledge of the skilled artisan to apply the same attribute (status) verification or checking steps on Figs. 12-15, to various or other types of attributes verification.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

No claims are allowed.

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17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

1. Any response to this action should be mailed to:

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2. In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov.

3. Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday. Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805. The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/

Primary Examiner, Art Unit 3689